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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,032	08/28/2001	Thomas T. Yamashita	YAMA001CON9	7285

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/942,032

Applicant(s)

YAMASHITA, THOMAS T.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-51 is/are pending in the application.
- 4a) Of the above claim(s) 29-39 and 42-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3643

DETAILED ACTION

Election/Restrictions

Applicant's election of Invention I in Paper No. 17 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The requirement for restriction is deemed proper and made final. Claims 37, 48, and 49 are withdrawn from examination.

Further, Applicant's election without traverse of Species V in Paper No. 17 is acknowledged. Claims 29-36, 38, 39, 42-47, 50, and 51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. The requirement for election of species is deemed proper and made final.

Specification

The disclosure is objected to because of the following informality:

The replacement paragraph for the benefit of prior filed applications of the amendment entered 21 August 2002, as paper no. 8, is improper because any benefit claim under 35 USC § 120, 121, or 365(c) that does not identify a prior application and also specify a relationship between each of the applications will not be in compliance with 37 CFR 1.78(a)(2)(i). In the instant paragraph the language "now U.S. Patent No. 5,797,976, which is a continuation - in - part of Application Serial No. 07/242,951, filed September 9, 1998, now abandoned and of

Art Unit: 3643

Application Serial No. 07/354,155, filed May 19, 1989, now abandoned” is improper because the relationship between 07/242,951 and 07/354,155 is not stated and whether 5,797,976’s application is also a CIP of 07/354,155 is not stated.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 40 and 41 are rejected under 35 U.S.C. §102(b) as being anticipated by JP55-40723.

As to Claim 40, JP55-40723 discloses a composition used to treat the soil (title written in English) and to enhance plant growth (in the “EFFECT” section of the abstract written in English) comprising an assimilable carbon skeleton energy component (“medium” of abstract written in English), a macronutrient component (“nitrogen source” of abstract written in English), a micronutrient component (“minor nutrients” of abstract written in English), a vitamin (“vitamin” of abstract written in English), and a complexing agent (Ca of “calcium carbonate” of abstract written in English). The composition of JP55-40723 would inherently perform the method step of mixing with the soil as recited in Claim 40.

As to Claim 41, JP55-40723 further discloses microorganisms (“microorganisms” of abstract written in English) which have a beneficial effect (“useful for decomposition and decay of organic matter” of abstract written in English) upon the soil.

Art Unit: 3643

Claim 40 is rejected under 35 U.S.C. §102(b) as being anticipated by Cunningham (US 5,340,376).

As to Claim 40, Cunningham discloses a method of treating soil (col. 7 lines 41-43) to promote the growth of plants (implied in “bioremediation” of abstract) therein, the method comprising mixing with the soil (col. 8 lines 52-53) a composition comprising an assimilable carbon skeleton energy component (“linseed oil” or “soybean oil” of col. 6 lines 63-68), a macronutrient component (“nitrogen” of col. 5 lines 30-34), a micronutrient component (“Micronutrients” of col. 5 line 65), a vitamin (“thiamine” col. 6 line 17), and a complexing agent (Ca of “calcium phosphates” of col. 5 line 42).

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 41 is rejected under 35 U.S.C. §103(a) as being unpatentable over Cunningham (US 5,340,376) in view of JP55-38834.

As to Claim 41, the limitations of Claim 40 are disclosed as described above. Cunningham further discloses beneficial microorganisms added to the soil (col. 8 lines 10-20). Not disclosed is the microorganisms mixed with the composition before application to the soil. JP55-38834, however, discloses adding bacteria (abstract written in English) to a composition

Art Unit: 3643

before application ("to form a solid" of abstract written in English). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Cunningham by adding the microorganism before application as disclosed by JP55-38834 as an efficient method of applying the composition.

Response to Arguments

Applicant's arguments with respect to claims 40 and 41 have been considered but are moot in view of the new ground(s) of rejection.

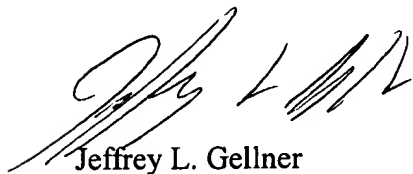
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reischl et al. discloses in the prior art a composition applied to soil with macro- and micro-nutrients. JP63-191889 discloses in the prior art a composition applied to soil with microorganisms.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner